

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

CONSUMER FINANCIAL PROTECTION)	
BUREAU, et al.,)	
)	
Plaintiffs,)	Case No. 24-cv-00040-EAW-MJR
)	
v.)	
)	
STRATFS, LLC (f/k/a STRATEGIC FINANCIAL)	
SOLUTIONS, LLC), et al.)	
)	
Defendants, and)	
)	
DANIEL BLUMKIN, et al.)	
)	
Relief Defendants.)	
)	

**MEMORANDUM OF LAW IN SUPPORT OF EMERGENCY MOTION
TO MODIFY THE ASSET FREEZE**

Defendant Ryan Sasson and Relief Defendants Albert Ian Behar and Daniel Blumkin (collectively, “Asset-Freeze Defendants”) respectfully move for an Order modifying the Asset Freeze, part of the Preliminary Injunction entered on March 4, 2024 (“PI”), ECF No. 184, to prohibit Plaintiffs from freezing assets related to conducting businesses unrelated to debt settlement, the corporate defendants, or the intervenor law firms.

INTRODUCTION

Sections II and III of the PI concerning the Asset Freeze are overly broad. The asset freeze as imposed by this PI deprives Asset-Freeze Defendants from access to *any and all* assets, regardless of how or when they are acquired, or what businesses such assets are connected to. Plaintiffs recently froze assets of 16 business entities partially owned by Asset-Freeze Defendants, and which are unrelated to debt-settlement or the companies and claims at issue in this litigation.

Due to this asset freeze, these unrelated businesses have no way of making the payments necessary to keep these businesses running.¹ The asset freeze should be modified to provide for necessary operational expenses for these businesses, as described more fully below and in the accompanying Declaration of Albert Ian Behar (“Behar Declaration”) and appended Exhibits, each of which needs funds to pay mortgage payments, utility payments, property management expenses, and maintenance in order to maintain the status quo.

RELEVANT FACTS

Sections II and III of the PI restrain Asset-Freeze Defendants from accessing assets that are:

- (1) Owned or controlled, directly or indirectly, by any Asset-Freeze Defendant, in whole or in part, or held, in whole or in part, for the benefit of any Asset-Freeze Defendant;
- (2) In the actual or constructive possession of any Asset-Freeze Defendant; or
- (3) Owned, controlled, or in the actual or constructive possession of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by, or under common control with any Asset Freeze Defendant, and any Assets held by, or under the name of any Asset-Freeze defendant by any Financial Institution.

(ECF 184, PI, Section II.A.).

Section III of the PI contains additional restrictions, including, but not limited to, directing all financial and brokerage institutions to:

Hold, retain within its control, and prohibit Asset-Freeze Defendants from withdrawing, removing, assigning, pledging, encumbering, disbursing, dissipating, converting, selling, gifting, or otherwise disposing of any accounts, Assets, funds, or other property that are owned by, held in the name of, for the benefit of, or otherwise controlled directly by, directly or indirectly, any Asset-Freeze Defendant,

¹ Furthermore, under the PI as currently written, Plaintiffs are permitted to freeze any future assets acquired by Asset-Freeze Defendants unrelated to the debt-settlement business. While this is not an immediate concern (unlike the concern concerning unrelated businesses articulated herein), such a freeze of future assets is similarly unnecessarily overbroad, and the PI should (eventually) be modified to prohibit this.

in whole or in part, except as directed by further order of this Court or as directed in writing by the Receiver.

(*Id.* Section III.A.)

On or about March 7, 2024, Plaintiffs instructed financial institutions to freeze all accounts relating to the following business entities:

1. CSGBSH AnnArborMI I CVD, LLC
2. CSGBSH ClintonMI I CVD, LLC
3. CSGBSH LansingMI II CVD, LLC
4. CSGBSH RHMI I CVD, LLC
5. CSGBSH RiverviewFL I CVD, LLC
6. CSGBSH SebastianFL I CVD, LLC
7. CSGBSH MadisonAL I CVD, LLC
8. CSGBSH HarrisburgPA II CVD, LLC
9. CSGBSH TuscaloosaAL I CVD, LLC
10. CSGBSH HuntsvilleAL I CVD, LLC
11. CSGBSH OcalaFL I CVD, LLC
12. CSGBSH OcalaFL II CVD, LLC
13. CSGBSH ROTX I CVD, LLC
14. Birds Fountains, LLC
15. Sushi Icon LLC
16. Claudio's Holding Corp. Inc.

These entities are all independent businesses partially owned by Asset-Freeze Defendants. Entities 15-16 are investments related to building and/or operating restaurants, and have nothing

to do with debt-settlement or the claims in this litigation. Behar Declaration at ¶¶6-7. Entities 1-14 are held by two parent investment companies: Birds Investment Inc. (“Birds”) and Timberline 1042 Inc. (“Timberline 1042”). Birds owns and operates 9 storage facilities and 1 multi-family complex. *Id.* at ¶3. Timberline 1042 owns and operates 4 storage facilities. *Id.* at ¶4. All facilities use third-party management companies (CubeSmart for storage facilities, Greystar for multi-family). *Id.* at ¶5 and Exhibit A thereto. On-site employees are employees of the management companies, and their payroll is passed through as a property level expense to reimburse them. *Id.* Each company directly pays all repair costs, utility costs, marketing costs. *Id.* All businesses have multiple loans (senior and mezzanine) that need to be serviced. *Id.* Their senior lenders make the businesses put a monthly reserve in escrow for property taxes and insurance, and they pay them at the end of the year with those funds. *Id.* These businesses are separate and unrelated to debt settlement, the corporate defendants, or the intervenor law firms. *Id.* at ¶¶3-7.

The frozen accounts related to these businesses are used to collect rental income and to pay necessary operating expenses. Behar Declaration, Exhibit A. Access to such accounts is necessary to pay vendors, management company expenses, taxes, insurance, debt payments, etc., *i.e.*, to keep these businesses going. *Id.* at ¶10, and attached Exhibit A. Furthermore, all of these assets have multiple loans that need to be serviced, several of which are currently overdue, *see* Behar Declaration at ¶9 and Exhibits B and C thereto, and others which are rapidly coming due. *See* Behar Declaration, Exhibit A. As a result of this overly broad asset freeze, however, these loan payments cannot be made. Itemized operating expenses for each of these affected businesses unrelated to the corporate defendants, the intervenor law firms, or debt-settlement are appended to the Behar Declaration in Exhibit A, and are reproduced below (with their respective total monthly expenses displayed in red):

1. CSGBSH AnnArborMI I CVD, LLC - **\$137,310**

AnnArborMI I

Item	Amount	Estimate / Exact	Due Date	Notes
Payroll (3/2-3/15)	\$ 2,900	Estimate	3/15/2024	Pass through expense billed from property manager (CubeSmart). Employees work on site at the locations. Estimated based on current staffing, hours, period, and benefits subject to slight variance once period ends.
Payroll (3/16-3/29)	\$ 2,900	Estimate	3/29/2024	Pass through expense billed from property manager (CubeSmart). Employees work on site at the locations. Estimated based on current staffing, hours, period, and benefits subject to slight variance once period ends.
Utilities	\$ 5,820	Estimate	3/13/2024	Trash, Exterminating, Electric, Telephone, Water, Fire Alarm all billed separate. Estimated total based on historical averages.
Repairs and Maintenance	\$ 1,000	Estimate	3/15/2024	Scheduled and emergency repairs. Average based upon historical with buffer for unforeseen expenses.
Other Controllable Expenses	\$ 5,200	Estimate	3/15/2024	Sum of Other Controllable Expenses.
Marketing	\$ 3,280	Estimate	3/13/2024	Pass through expense billed from property manager (CubeSmart). Estimate based on 12 month average. Varies based upon number of leads and leases from 3rd party channels
Management Fee	\$ 8,500	Estimate	3/15/2024	5% of revenues paid to property manager (CubeSmart) per property management agreement.
Real Estate Taxes	\$ -		N/A	Included in Mortgage statement total.
Property Insurance	\$ -		N/A	Included in Mortgage statement total.
Mortgage	\$ 83,467	Exact	3/6/2024	Past due (payment reversed when accounts were frozen). Share of cross-collateralized 'AnnArborMI I' Mortgage from 'Exhibit A'. Includes Interest, Principal. Property Tax, Insurance Reserve. AnnArborMI pays the total amount per billing statement, and ClintonMI I reimburses its portion.
Interest - Mezzanine Debt	\$ 11,805	Exact	3/15/2024	Set up on autopay to pay our mezzanine debt to NC CVD FUND LLC.
ESOP Corporations	\$ 12,438	Exact	4/1/2024	Payment to Birds Investments as a pass through which goes to pay negative carry shortfall for ESOP loans at First Republic.
Total	\$ 137,310			

2. CSGBSH ClintonMI I CVD, LLC - **\$85,016**

ClintonMI I

Item	Amount	Estimate / Exact	Due Date	Notes
Payroll (3/2-3/15)	\$ 3,350	Estimate	3/15/2024	Pass through expense billed from property manager (CubeSmart). Employees work on site at the locations. Estimated based on current staffing, hours, period, and benefits subject to slight variance once period ends.
Payroll (3/16-3/29)	\$ 3,350	Estimate	3/29/2024	Pass through expense billed from property manager (CubeSmart). Employees work on site at the locations. Estimated based on current staffing, hours, period, and benefits subject to slight variance once period ends.
Utilities	\$ 5,950	Estimate	3/13/2024	Trash, Exterminating, Electric, Telephone, Water, Fire Alarm all billed separate. Estimated total based on historical averages.
Repairs and Maintenance	\$ 1,000	Estimate	3/15/2024	Scheduled and emergency repairs. Average based upon historical with buffer for unforeseen expenses.
Other Controllable Expenses	\$ 2,900	Estimate	3/15/2024	Sum of Other Controllable Expenses.
Marketing	\$ 2,300	Estimate	3/13/2024	Pass through expense billed from property manager (CubeSmart). Estimate based on 12 month average. Varies based upon number of leads and leases from 3rd party channels
Management Fee	\$ 4,400	Estimate	3/15/2024	5% of revenues paid to property manager (CubeSmart) per property management agreement.
Real Estate Taxes	\$ -		N/A	Included in Mortgage statement total.
Property Insurance	\$ -		N/A	Included in Mortgage statement total.
Mortgage	\$ 44,146	Exact	3/6/2024	Past due (payment reversed when accounts were frozen). Share of cross-collateralized 'AnnArborMI I' Mortgage from 'Exhibit A'. Includes Interest, Principal. Property Tax, Insurance Reserve. AnnArborMI pays the total amount per billing statement, and ClintonMI I reimburses its portion.
Interest - Mezzanine Debt	\$ 9,040	Exact	3/15/2024	Set up on autopay to pay our mezzanine debt to NC CVD FUND LLC.
ESOP Corporations	\$ 8,580	Exact	4/1/2024	Payment to Birds Investments as a pass through which goes to pay negative carry shortfall for ESOP loans at First Republic.
Total	\$ 85,016			

3. CSGBSH LansingMI II CVD, LLC - **\$93,930**

LansingMI I

Item	Amount	Estimate / Exact	Due Date	Notes
Payroll (3/2-3/15)	\$ 3,600	Estimate	3/15/2024	Pass through expense billed from property manager (CubeSmart). Employees work on site at the locations. Estimated based on current staffing, hours, period, and benefits subject to slight variance once period ends.
Payroll (3/16-3/29)	\$ 3,600	Estimate	3/29/2024	Pass through expense billed from property manager (CubeSmart). Employees work on site at the locations. Estimated based on current staffing, hours, period, and benefits subject to slight variance once period ends.
Utilities	\$ 11,500	Estimate	3/13/2024	Trash, Exterminating, Electric, Telephone, Water, Fire Alarm all billed separate. Estimated total based on historical averages.
Repairs and Maintenance	\$ 2,500	Estimate	3/15/2024	Scheduled and emergency repairs. Average based upon historical with buffer for unforeseen expenses.
Other Controllable Expenses	\$ 3,900	Estimate	3/15/2024	Sum of Other Controllable Expenses.
Marketing	\$ 2,175	Estimate	3/13/2024	Pass through expense billed from property manager (CubeSmart). Estimate based on 12 month average. Varies based upon number of leads and leases from 3rd party channels
Management Fee	\$ 4,600	Estimate	3/15/2024	5% of revenues paid to property manager (CubeSmart) per property management agreement.
Real Estate Taxes	\$ -		N/A	Included in Mortgage statement total.
Property Insurance	\$ -		N/A	Included in Mortgage statement total.
Mortgage	\$ 42,525	Exact	3/6/2024	Past due (payment reversed when accounts were frozen). Share of cross-collateralized 'RHMI I' Mortgage from 'Exhibit A'. Includes Interest, Principal, Property Tax, Insurance Reserve. RHMI pays the total amount per billing statement, and LansingMI I reimburses its portion.
Interest - Mezzanine Debt	\$ 10,020	Exact	3/15/2024	Set up on autopay to pay our mezzanine debt to NC CVD FUND LLC.
ESOP Corporations	\$ 9,510	Exact	4/1/2024	Payment to Birds Investments as a pass through which goes to pay negative carry shortfall for ESOP loans at First Republic.
Total	\$ 93,930			

4. CSGBSH RHMI I CVD, LLC - **\$143,144**

RHMI I

Item	Amount	Estimate / Exact	Due Date	Notes
Payroll (3/2-3/15)	\$ 3,950	Estimate	3/15/2024	Pass through expense billed from property manager (CubeSmart). Employees work on site at the locations. Estimated based on current staffing, hours, period, and benefits subject to slight variance once period ends.
Payroll (3/16-3/29)	\$ 3,950	Estimate	3/29/2024	Pass through expense billed from property manager (CubeSmart). Employees work on site at the locations. Estimated based on current staffing, hours, period, and benefits subject to slight variance once period ends.
Utilities	\$ 7,000	Estimate	3/13/2024	Trash, Exterminating, Electric, Telephone, Water, Fire Alarm all billed separate. Estimated total based on historical averages.
Repairs and Maintenance	\$ 1,500	Estimate	3/15/2024	Scheduled and emergency repairs. Average based upon historical with buffer for unforeseen expenses.
Other Controllable Expenses	\$ 4,800	Estimate	3/15/2024	Sum of Other Controllable Expenses.
Marketing	\$ 1,650	Estimate	3/13/2024	Pass through expense billed from property manager (CubeSmart). Estimate based on 12 month average. Varies based upon number of leads and leases from 3rd party channels
Management Fee	\$ 6,400	Estimate	3/15/2024	5% of revenues paid to property manager (CubeSmart) per property management agreement.
Real Estate Taxes	\$ -		N/A	Included in Mortgage statement total.
Property Insurance	\$ -		N/A	Included in Mortgage statement total.
Mortgage	\$ 101,246	Exact	3/6/2024	Past due (payment reversed when accounts were frozen). Share of cross-collateralized 'RHMI I' Mortgage from 'Exhibit A'. Includes Interest, Principal, Property Tax, Insurance Reserve. RHMI pays the total amount per billing statement, and LansingMI I reimburses its portion.
Interest - Mezzanine Debt	\$ 6,500	Exact	3/15/2024	Set up on autopay to pay our mezzanine debt to NC CVD FUND LLC.
ESOP Corporations	\$ 6,148	Exact	4/1/2024	Payment to Birds Investments as a pass through which goes to pay negative carry shortfall for ESOP loans at First Republic.
Total	\$ 143,144			

5. CSGBSH RiverviewFL I CVD, LLC - **\$56,121**

RiverviewFL I

Item	Amount	Estimate / Exact	Due Date	Notes
Payroll (3/2-3/15)	\$ 3,000	Estimate	3/15/2024	Pass through expense billed from property manager (CubeSmart). Employees work on site at the locations. Estimated based on current staffing, hours, period, and benefits subject to slight variance once period ends.
Payroll (3/16-3/29)	\$ 3,000	Estimate	3/29/2024	Pass through expense billed from property manager (CubeSmart). Employees work on site at the locations. Estimated based on current staffing, hours, period, and benefits subject to slight variance once period ends.
Utilities	\$ 3,370	Estimate	3/13/2024	Trash, Exterminating, Electric, Telephone, Water, Fire Alarm all billed separate. Estimated total based on historical averages.
Repairs and Maintenance	\$ 1,000	Estimate	3/15/2024	Scheduled and emergency repairs. Average based upon historical with buffer for unforeseen expenses.
Other Controllable Expenses	\$ 3,570	Estimate	3/15/2024	Sum of Other Controllable Expenses.
Marketing	\$ 3,800	Estimate	3/13/2024	Pass through expense billed from property manager (CubeSmart). Estimate based on 12 month average. Varies based upon number of leads and leases from 3rd party channels
Management Fee	\$ 3,900	Estimate	3/15/2024	5% of revenues paid to property manager (CubeSmart) per property management agreement.
Real Estate Taxes	\$ -		N/A	Included in Mortgage statement total.
Property Insurance	\$ -		N/A	Included in Mortgage statement total.
Mortgage	\$ 29,662	Exact	3/6/2024	Past due (payment reversed when accounts were frozen).
ESOP Corporations	\$ 4,819	Exact	4/1/2024	Payment to Timbelrine 1042 as a pass through which goes to pay negative carry shortfall for ESOP loans at First Republic.
Total	\$ 56,121			

6. CSGBSH SebastianFL I CVD, LLC - **\$205,127**

SebastianFL I

Item	Amount	Estimate / Exact	Due Date	Notes
Payroll (3/2-3/15)	\$ 4,350	Estimate	3/15/2024	Pass through expense billed from property manager (CubeSmart). Employees work on site at the locations. Estimated based on current staffing, hours, period, and benefits subject to slight variance once period ends.
Payroll (3/16-3/29)	\$ 4,350	Estimate	3/29/2024	Pass through expense billed from property manager (CubeSmart). Employees work on site at the locations. Estimated based on current staffing, hours, period, and benefits subject to slight variance once period ends.
Utilities	\$ 4,070	Estimate	3/13/2024	Trash, Exterminating, Electric, Telephone, Water, Fire Alarm all billed separate. Estimated total based on historical averages.
Repairs and Maintenance	\$ 2,000	Estimate	3/15/2024	Scheduled and emergency repairs. Average based upon historical with buffer for unforeseen expenses.
Other Controllable Expenses	\$ 5,690	Estimate	3/15/2024	Sum of Other Controllable Expenses.
Marketing	\$ 4,060	Estimate	3/13/2024	Pass through expense billed from property manager (CubeSmart). Estimate based on 12 month average. Varies based upon number of leads and leases from 3rd party channels
Management Fee	\$ 8,000	Estimate	3/15/2024	5% of revenues paid to property manager (CubeSmart) per property management agreement.
Real Estate Taxes	\$ -		N/A	Included in Mortgage statement total.
Property Insurance	\$ -		N/A	Included in Mortgage statement total.
Mortgage	\$ 141,289	Exact	3/6/2024	Past due (payment reversed when accounts were frozen). Share of cross-collateralized 'SebastianFL I' Mortgage from 'Exhibit A'. Includes Interest, Principal, Property Tax, Insurance Reserve. SebastianFL pays the total amount per billing statement, and the other 3 properties on the loan reimburse their portions afterwards.
Interest - Mezzanine Debt	\$ 17,000	Exact	3/15/2024	Set up on autopay to pay our mezzanine debt to NC CVD FUND LLC.
ESOP Corporations	\$ 14,318	Exact	4/1/2024	Payment to Birds Investments as a pass through which goes to pay negative carry shortfall for ESOP loans at First Republic.
Total	\$ 205,127			

7. CSGBSH MadisonAL I CVD, LLC - ~~\$25,558~~

MadisonAL I

Item	Amount	Estimate / Exact	Due Date	Notes
Payroll (3/2-3/15)	\$ 1,760	Estimate	3/15/2024	Pass through expense billed from property manager (CubeSmart). Employees work on site at the locations. Estimated based on current staffing, hours, period, and benefits subject to slight variance once period ends.
Payroll (3/16-3/29)	\$ 1,760	Estimate	3/29/2024	Pass through expense billed from property manager (CubeSmart). Employees work on site at the locations. Estimated based on current staffing, hours, period, and benefits subject to slight variance once period ends.
Utilities	\$ 890	Estimate	3/13/2024	Trash, Exterminating, Electric, Telephone, Water, Fire Alarm all billed separate. Estimated total based on historical averages.
Repairs and Maintenance	\$ 1,000	Estimate	3/15/2024	Scheduled and emergency repairs. Average based upon historical with buffer for unforeseen expenses.
Other Controllable Expenses	\$ 2,580	Estimate	3/15/2024	Sum of Other Controllable Expenses.
Marketing	\$ 900	Estimate	3/13/2024	Pass through expense billed from property manager (CubeSmart). Estimate based on 12 month average. Varies based upon number of leads and leases from 3rd party channels
Management Fee	\$ 2,000	Estimate	3/15/2024	5% of revenues paid to property manager (CubeSmart) per property management agreement.
Real Estate Taxes	\$ -		N/A	Included in Mortgage statement total.
Property Insurance	\$ -		N/A	Included in Mortgage statement total.
Mortgage	\$ 9,902	Exact	3/6/2024	Past due (payment reversed when accounts were frozen). Share of cross-collateralized 'SebastianFL I' Mortgage from 'Exhibit A'. Includes Interest, Principal. Property Tax, Insurance Reserve. SebastianFL pays the total amount per billing statement, and MadisonAL I reimburses for its share.
Interest - Mezzanine Debt	\$ 2,600	Exact	3/15/2024	Set up on autopay to pay our mezzanine debt to NC CVD FUND LLC.
ESOP Corporations	\$ 2,166	Exact	4/1/2024	Payment to Birds Investments as a pass through which goes to pay negative carry shortfall for ESOP loans at First Republic.
Total	\$ 25,558			

8. CSGBSH HarrisburgPA II CVD, LLC - ~~\$59,999~~

HarrisburgPA II

Item	Amount	Estimate / Exact	Due Date	Notes
Payroll (3/2-3/15)	\$ 3,200	Estimate	3/15/2024	Pass through expense billed from property manager (CubeSmart). Employees work on site at the locations. Estimated based on current staffing, hours, period, and benefits subject to slight variance once period ends.
Payroll (3/16-3/29)	\$ 3,200	Estimate	3/29/2024	Pass through expense billed from property manager (CubeSmart). Employees work on site at the locations. Estimated based on current staffing, hours, period, and benefits subject to slight variance once period ends.
Utilities	\$ 2,400	Estimate	3/13/2024	Trash, Exterminating, Electric, Telephone, Water, Fire Alarm all billed separate. Estimated total based on historical averages.
Repairs and Maintenance	\$ 1,500	Estimate	3/15/2024	Scheduled and emergency repairs. Average based upon historical with buffer for unforeseen expenses.
Other Controllable Expenses	\$ 3,700	Estimate	3/15/2024	Sum of Other Controllable Expenses.
Marketing	\$ 2,250	Estimate	3/13/2024	Pass through expense billed from property manager (CubeSmart). Estimate based on 12 month average. Varies based upon number of leads and leases from 3rd party channels
Management Fee	\$ 3,600	Estimate	3/15/2024	5% of revenues paid to property manager (CubeSmart) per property management agreement.
Real Estate Taxes	\$ -		N/A	Included in Mortgage statement total.
Property Insurance	\$ -		N/A	Included in Mortgage statement total.
Mortgage	\$ 26,408	Exact	3/6/2024	Past due (payment reversed when accounts were frozen). Share of cross-collateralized 'SebastianFL I' Mortgage from 'Exhibit A'. Includes Interest, Principal. Property Tax, Insurance Reserve. SebastianFL pays the total amount per billing statement, and HarrisburgPA II reimburses afterwards.
Interest - Mezzanine Debt	\$ 7,500	Exact	3/15/2024	Set up on autopay to pay our mezzanine debt to NC CVD FUND LLC.
ESOP Corporations	\$ 6,241	Exact	4/1/2024	Payment to Birds Investments as a pass through which goes to pay negative carry shortfall for ESOP loans at First Republic.
Total	\$ 59,999			

9. CSGBSH TuscaloosaAL I CVD, LLC - **\$65,791**

TuscaloosaAL I

Item	Amount	Estimate / Exact	Due Date	Notes
Payroll (3/2-3/15)	\$ 3,457	Estimate	3/15/2024	Pass through expense billed from property manager (CubeSmart). Employees work on site at the locations. Estimated based on current staffing, hours, period, and benefits subject to slight variance once period ends.
Payroll (3/16-3/29)	\$ 3,457	Estimate	3/29/2024	Pass through expense billed from property manager (CubeSmart). Employees work on site at the locations. Estimated based on current staffing, hours, period, and benefits subject to slight variance once period ends.
Utilities	\$ 3,676	Estimate	3/13/2024	Trash, Exterminating, Electric, Telephone, Water, Fire Alarm all billed separate. Estimated total based on historical averages.
Repairs and Maintenance	\$ 2,200	Estimate	3/15/2024	Scheduled and emergency repairs. Average based upon historical with buffer for unforeseen expenses.
Other Controllable Expenses	\$ 3,850	Estimate	3/15/2024	Sum of Other Controllable Expenses.
Marketing	\$ 2,010	Estimate	3/13/2024	Pass through expense billed from property manager (CubeSmart). Estimate based on 12 month average. Varies based upon number of leads and leases from 3rd party channels
Management Fee	\$ 4,000	Estimate	3/15/2024	5% of revenues paid to property manager (CubeSmart) per property management agreement.
Real Estate Taxes	\$ -		N/A	Included in Mortgage statement total.
Property Insurance	\$ -		N/A	Included in Mortgage statement total.
Mortgage	\$ 30,135	Exact	3/6/2024	Past due (payment reversed when accounts were frozen). Share of cross-collateralized 'SebastianFL I' Mortgage from 'Exhibit A'. Includes Interest, Principal, Property Tax, Insurance Reserve. SebastianFL pays the total amount per billing statement, and TuscaloosaAL I reimburses for its share.
Interest - Mezzanine Debt	\$ 7,166	Exact	3/15/2024	Set up on autopay to pay our mezzanine debt to NC CVD FUND LLC.
ESOP Corporations	\$ 5,840	Exact	4/1/2024	Payment to Birds Investments as a pass through which goes to pay negative carry shortfall for ESOP loans at First Republic.
Total	\$ 65,791			

10. CSGBSH HuntsvilleAL I CVD, LLC - **\$91,383**

HuntsvilleAL I

Item	Amount	Estimate / Exact	Due Date	Notes
Payroll (3/2-3/15)	\$ 2,300	Estimate	3/15/2024	Pass through expense billed from property manager (CubeSmart). Employees work on site at the locations. Estimated based on current staffing, hours, period, and benefits subject to slight variance once period ends.
Payroll (3/16-3/29)	\$ 2,300	Estimate	3/29/2024	Pass through expense billed from property manager (CubeSmart). Employees work on site at the locations. Estimated based on current staffing, hours, period, and benefits subject to slight variance once period ends.
Utilities	\$ 3,800	Estimate	3/13/2024	Trash, Exterminating, Electric, Telephone, Water, Fire Alarm all billed separate. Estimated total based on historical averages.
Repairs and Maintenance	\$ 1,500	Estimate	3/15/2024	Scheduled and emergency repairs. Average based upon historical with buffer for unforeseen expenses.
Other Controllable Expenses	\$ 4,600	Estimate	3/15/2024	Sum of Other Controllable Expenses.
Marketing	\$ 1,700	Estimate	3/13/2024	Pass through expense billed from property manager (CubeSmart). Estimate based on 12 month average. Varies based upon number of leads and leases from 3rd party channels
Management Fee	\$ 4,600	Estimate	3/15/2024	5% of revenues paid to property manager (CubeSmart) per property management agreement.
Real Estate Taxes	\$ -		N/A	Included in Mortgage statement total.
Property Insurance	\$ -		N/A	Included in Mortgage statement total.
Mortgage	\$ 51,898	Exact	3/6/2024	Past due (payment reversed when accounts were frozen). Share of cross-collateralized 'ROTX I' Mortgage from 'Exhibit A'. Includes Interest, Principal, Property Tax, Insurance Reserve. ROTX I pays the total amount per billing statement, and HuntsvilleAL I reimburses for its share
Interest - Mezzanine Debt	\$ 10,116	Exact	3/15/2024	Set up on autopay to pay our mezzanine debt to NC CVD FUND LLC.
ESOP Corporations	\$ 8,569	Exact	4/1/2024	Payment to Timbelrine 1042 as a pass through which goes to pay negative carry shortfall for ESOP loans at First Republic.
Total	\$ 91,383			

11. CSGBSH OcalaFL I CVD, LLC - **\$41,445**

OCALAFL I

Item	Amount	Estimate / Exact	Due Date	Notes
Payroll (3/2-3/15)	\$ 2,969	Estimate	3/15/2024	Pass through expense billed from property manager (CubeSmart). Employees work on site at the locations. Estimated based on current staffing, hours, period, and benefits subject to slight variance once period ends.
Payroll (3/16-3/29)	\$ 2,969	Estimate	3/29/2024	Pass through expense billed from property manager (CubeSmart). Employees work on site at the locations. Estimated based on current staffing, hours, period, and benefits subject to slight variance once period ends.
Utilities	\$ 2,159	Estimate	3/13/2024	Trash, Exterminating, Electric, Telephone, Water, Fire Alarm all billed separate. Estimated total based on historical averages.
Repairs and Maintenance	\$ 1,000	Estimate	3/15/2024	Scheduled and emergency repairs. Average based upon historical with buffer for unforeseen expenses.
Other Controllable Expenses	\$ 2,900	Estimate	3/15/2024	Sum of Other Controllable Expenses.
Marketing	\$ 1,995	Estimate	3/13/2024	Pass through expense billed from property manager (CubeSmart). Estimate based on 12 month average. Varies based upon number of leads and leases from 3rd party channels
Management Fee	\$ 2,400	Estimate	3/15/2024	5% of revenues paid to property manager (CubeSmart) per property management agreement.
Real Estate Taxes	\$ -		N/A	Included in Mortgage statement total.
Property Insurance	\$ -		N/A	Included in Mortgage statement total.
Mortgage	\$ 19,353	Exact	3/6/2024	Past due (payment reversed when accounts were frozen). Share of cross-collateralized 'ROTX I' Mortgage from 'Exhibit A'. Includes Interest, Principal. Property Tax, Insurance Reserve. ROTX I pays the total amount per billing statement, and OcalaFL I reimburses for its share.
Interest - Mezzanine Debt	\$ 3,100	Exact	3/15/2024	Set up on autopay to pay mezzanine debt to NC CVD FUND LLC.
ESOP Corporations	\$ 2,600	Exact	4/1/2024	Payment to Timbeltrine 1042 as a pass through which goes to pay negative carry shortfall for ESOP loans at First Republic.
Total	\$ 41,445			

12. CSGBSH OcalaFL II CVD, LLC - **\$27,019**

OCALAFL II

Item	Amount	Estimate / Exact	Due Date	Notes
Payroll (3/2-3/15)	\$ 2,455	Estimate	3/15/2024	Pass through expense billed from property manager (CubeSmart). Employees work on site at the locations. Estimated based on current staffing, hours, period, and benefits subject to slight variance once period ends.
Payroll (3/16-3/29)	\$ 2,455	Estimate	3/29/2024	Pass through expense billed from property manager (CubeSmart). Employees work on site at the locations. Estimated based on current staffing, hours, period, and benefits subject to slight variance once period ends.
Utilities	\$ 1,702	Estimate	3/13/2024	Trash, Exterminating, Electric, Telephone, Water, Fire Alarm all billed separate. Estimated total based on historical averages.
Repairs and Maintenance	\$ 1,000	Estimate	3/15/2024	Scheduled and emergency repairs. Average based upon historical with buffer for unforeseen expenses.
Other Controllable Expenses	\$ 3,200	Estimate	3/15/2024	Sum of Other Controllable Expenses.
Marketing	\$ 1,955	Estimate	3/13/2024	Pass through expense billed from property manager (CubeSmart). Estimate based on 12 month average. Varies based upon number of leads and leases from 3rd party channels
Management Fee	\$ 2,500	Estimate	3/15/2024	5% of revenues paid to property manager (CubeSmart) per property management agreement.
Real Estate Taxes	\$ -		N/A	Included in Mortgage statement total.
Property Insurance	\$ -		N/A	Included in Mortgage statement total.
Mortgage	\$ 8,294	Exact	3/6/2024	Past due (payment reversed when accounts were frozen). Share of cross-collateralized 'ROTX I' Mortgage from 'Exhibit A'. Includes Interest, Principal. Property Tax, Insurance Reserve. ROTX I pays the total amount per billing statement, and OcalaFL II reimburses for its share.
Interest - Mezzanine Debt	\$ 1,900	Exact	3/15/2024	Set up on autopay to pay our mezzanine debt to NC CVD FUND LLC.
ESOP Corporations	\$ 1,558	Exact	4/1/2024	Payment to Timbeltrine 1042 as a pass through which goes to pay negative carry shortfall for ESOP loans at First Republic.
Total	\$ 27,019			

13. CSGBSH ROTX I CVD, LLC - \$158,624**ROTX I**

Item	Amount	Estimate / Exact	Due Date	Notes
Payroll (3/2-3/15)	\$ 4,100	Estimate	3/15/2024	Pass through expense billed from property manager (CubeSmart). Employees work on site at the locations. Estimated based on current staffing, hours, period, and benefits subject to slight variance once period ends.
Payroll (3/16-3/29)	\$ 4,100	Estimate	3/29/2024	Pass through expense billed from property manager (CubeSmart). Employees work on site at the locations. Estimated based on current staffing, hours, period, and benefits subject to slight variance once period ends.
Utilities	\$ 3,780	Estimate	3/13/2024	Trash, Exterminating, Electric, Telephone, Water, Fire Alarm all billed separate. Estimated total based on historical averages.
Repairs and Maintenance	\$ 1,500	Estimate	3/15/2024	Scheduled and emergency repairs. Average based upon historical with buffer for unforeseen expenses.
Other Controllable Expenses	\$ 4,550	Estimate	3/15/2024	Sum of Other Controllable Expenses.
Marketing	\$ 1,700	Estimate	3/13/2024	Pass through expense billed from property manager (CubeSmart). Estimate based on 12 month average. Varies based upon number of leads and leases from 3rd party channels
Management Fee	\$ 4,600	Estimate	3/15/2024	5% of revenues paid to property manager (CubeSmart) per property management agreement.
Real Estate Taxes	\$ -		N/A	Included in Mortgage statement total.
Property Insurance	\$ -		N/A	Included in Mortgage statement total.
Mortgage	\$ 120,477	Exact	3/6/2024	Past due (payment reversed when accounts were frozen). Share of cross-collateralized 'ROTX I' Mortgage from 'Exhibit A'. Includes Interest, Principal, Property Tax, Insurance Reserve. ROTX I pays the total amount per billing statement, and the other three properties reimburse their shares afterwards.
Interest - Mezzanine Debt	\$ 7,566	Exact	3/15/2024	Set up on autopay to pay our mezzanine debt to NC CVD FUND LLC.
ESOP Corporations	\$ 6,251	Exact	4/1/2024	Payment to Timberline 1042 as a pass through which goes to pay negative carry shortfall for ESOP loans at First Republic.
Total	\$ 158,624			

14. Birds Fountains, LLC - \$572,534**Birds Fountains**

Item	Amount	Estimate / Exact	Due Date	Notes
Payroll (3/2-3/15)	\$ 34,000	Estimate	3/15/2024	Pass through expense billed from property manager (Greystar). Employees work on site at the locations. Estimated based on current staffing, hours, period, and benefits subject to slight variance once period ends.
Payroll (3/16-3/29)	\$ 34,000	Estimate	3/29/2024	Pass through expense billed from property manager (Greystar). Employees work on site at the locations. Estimated based on current staffing, hours, period, and benefits subject to slight variance once period ends.
Repairs and Maintenance	\$ 10,200	Estimate	3/15/2024	Scheduled and emergency repairs. Average based upon historical with buffer for unforeseen expenses.
Make Ready Expense	\$ 17,000	Estimate	3/15/2024	Expenses in relation to making apartments ready for new move ins. Based on historical.
Recreational Amenities	\$ 1,150	Estimate	3/15/2024	Expenses in relation to repairing common amenities. Based on historical.
Contract Services	\$ 19,500	Estimate	3/13/2024	Payments for necessary contracts the property has in place, full breakdown in financials.
Advertising, Marketing	\$ 7,000	Estimate	3/15/2024	Expenses in relation to marketing to prospective new tenants. Based on historical.
Office Expenses	\$ 9,500	Estimate	3/15/2024	Expenses in relation to operating the property's office. Based on historical.
General, Administrative	\$ 5,500	Estimate	3/13/2024	Expenses in relation to general and administrative including software and legal fees. Based on historical.
Utilities	\$ 33,000	Estimate	3/15/2024	Trash, Exterminating, Electric, Telephone, Water, Fire Alarm, all billed separate. Estimated total based on historical averages.
Management Fee	\$ 17,500	Estimate	3/15/2024	3.5% of revenues paid to our property manager (GreyStar) per property management agreement.
Real Estate Taxes	\$ -		N/A	Included in Mortgage statement total.
Property Insurance	\$ -		N/A	Included in Mortgage statement total.
Mortgage	\$ 293,616	Exact	3/6/2024	Due 3/10/24 per billing statement.
Interest - Mezzanine Debt	\$ 60,568	Exact	3/15/2024	Set up on autopay to pay our mezzanine debt to Hillcrest Fund II Lender LLC.
Capital Expenditures	\$ 30,000	Estimate	3/15/2024	Expenses for capital improvements on the property, based on historical averages.
Total	\$ 572,534			

Counsel for Asset-Freeze Defendants immediately reached out to Plaintiffs on March 7, 2024 upon learning these assets were frozen. Declaration of Matthew Kennison (“Kennison Declaration”), Exhibit A thereto. On that same day, counsel provided documentation to Plaintiffs to demonstrate that these entities are separate businesses unaffiliated with the corporate defendants, and not engaged in debt-settlement, and to provide information concerning the loan payments required to immediately be made by these entities. *Id.* Additionally, counsel advised Plaintiffs that the Asset-Freeze Defendants are willing to agree that any income generated from any of these businesses would not be used for the Asset-Freeze Defendants personal use unless and until there is a subsequent agreement with Plaintiffs or until the Court orders otherwise. *Id.*

On March 8, 2024, Plaintiffs advised that they are still reviewing these documents provided by Asset-Freeze Defendants, and have asked for numerous additional documents, many of which have no bearing on request to permit normal operating expenses to be unfrozen to keep these businesses afloat. *Id.* (requesting, for example, current valuations for the property before Plaintiffs will agree to consider unfreezing any amounts for operating expenses). Plaintiffs have not provided any further assurance that they will agree to modify the asset freeze in any way to allow these businesses to continue making necessary payments, nor have they moved with any expediency. In the meantime, bills related to running these businesses are overdue or coming due, and at least one lender has contacted these companies to inform them that payments due and owing have not been made and are currently overdue. *See, e.g.*, Exhibit C to the Behar Declaration (email from Wells Fargo regarding Loan 304102139 for CSGBSH Huntsville AL I LLC, in which they stated they have not received the March 6, 2024 payment of \$120,477.68, as well as associated late charges of \$33,180.74). Despite a request by Asset-Freeze Defendants’ counsel for Plaintiffs to at least

unfreeze amounts to pay the overdue mortgage payments, Plaintiffs have declined to respond, thereby necessitating this motion.

ARGUMENT

The authority to issue an asset freeze is within the equitable power of the district court. *Sec. & Exch. Comm’n v. Santillo*, 2018 WL 3392881, at *2 (S.D.N.Y. July 11, 2018) (citing *SEC v. Stein*, 2009 WL 1181061, at *1 (S.D.N.Y. Apr. 30, 2009)). But a court considering whether to issue an asset freeze must also weigh “the disadvantages and possible deleterious effect of a freeze ... against the considerations indicating the need for such relief.” *Id.* Furthermore, a defendant may seek a modification of an asset freeze if the modification “is in the interest of the defrauded investors.” *Santillo*, 2018 WL 3392881, at *2 (citing *SEC v. Grossman*, 887 F. Supp. 649, 661 (S.D.N.Y. 1995)).

The purpose of the asset freeze is to “preserve the status quo” and protect the interests of consumers and preserve assets for future disgorgement. *SEC v. Infinity Group Co.*, 212 F.3d 180, 197 (3rd Cir. 2000). The current asset freeze in the PI circumvents this fundamental purpose by freezing all assets and preventing the uninvolved business entities discussed herein from protecting and preserving its assets. The Second Circuit has recognized that freezing assets may ultimately “thwart the goal of compensating investors if the freeze were to cause such disruption of defendants’ businesses affairs that they could be financially destroyed.” *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1106 (2d Cir. 1972) (“Freezing assets under certain circumstances, however, might thwart the goal of compensating investors if the freeze were to cause such disruption of defendants’ business affairs that they would be financially destroyed.”).

The Asset-Freeze Defendants request that the Court exercise its equitable discretion to modify the PI and require that the assets of these business entities be immediately unfrozen so that

operating expenses can be paid in the normal course. Unfreezing these assets so that these businesses can continue to be run profitably is in the interest of all involved in this litigation. As in *Santillo*, if defendants prevail, the Asset-Freeze Defendants “could draw on these assets as sources of legitimate income.” *Santillo*, 2018 WL 3392881, at *2. Should Plaintiffs prevail, however, they could attempt to disgorge these assets after making a sufficient showing before the Court that such assets are proper subjects of disgorgement. *Id.* Either way, “it would make sense to unfreeze the funds derived from” these unrelated business assets, particularly because the Asset-Freeze defendants have demonstrated that those assets are necessary “to maintain the businesses as viable assets.” *Id.* See also Behar Declaration at ¶¶9-10 and Exhibit A thereto.²

CONCLUSION

Based on the foregoing, Defendant Ryan Sasson and Relief Defendants Albert Ian Behar and Daniel Blumkin respectfully request the Court modify the PI to prohibit Plaintiffs from freezing assets related to conducting the businesses described herein and to immediately order the release of funds in the frozen accounts sufficient to pay operating business expenses.

Respectfully submitted,

Dated: March 12, 2024

/s/ Ronald S. Safer

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² The Asset-Freeze Defendants do not seek to use any of the business income generated from these companies for their personal use, and are prepared to continue to otherwise comply with the terms of the asset freeze and the PI until further agreed to by the parties or as otherwise ordered by the Court.

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CERTIFICATE OF SERVICE

I, Ronald S. Safer, an attorney, hereby certify that on March 11, 2024, I caused a copy of the foregoing to be served via CM/ECF upon all counsel of record.

/s/ Ronald S. Safer